

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8893 of 2015

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Suman Kumari daughter of Yogendra Prasad Thakur, wife of Umesh Thakur, resident of village and Post Office- Balha, Via- Pusa, P.S.- Kalyanpur, District- Samastipur at present posted on the post of A.N.M. Health Sub Centre Bandra, Shivaji Nagar Rosra, District- Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna
3. The Director-in-Chief, Health Services, Government of Bihar, Patna
4. The Director, Provident Fund Director, Government of Bihar, Pant Bhawan, Patna
5. The Civil Surgeon-cum-Chief Medical Officer, Samastipur
6. The In-charge Medical Officer, Primary Health Centre, Shivaji Nagar, Rosra, District- Samastipur.
7. The Treasury Officer, Sub-Treasury Rosra, District- Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jitendra Kumar Roy, Advocate
	:	Mr. Sunil Kumar Advocate
For the Respondent/s	:	Mr. Mritunjay Kumar, Adv. AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 04-09-2019 The only issue which remains in view of the last order dated 21.8.2019 in the instant proceeding is, whether the petitioner would be entitled to benefits under the Old Pension Scheme on account of her joining being delayed by the authorities. The Director Health Services Bihar, Patna issued the order dated 23.3.2005 whereby the petitioner was appointed an Auxiliary Nurse Midwifery (ANM). The appointment was to be effected from the date of submission of the joining.

The admitted facts are that the petitioner did not join



the place of posting till 31.10.2011, on that date she has submitted her joining before the Civil Surgeon-cum- Chief Medical Officer, Samastipur.

The instant writ petition has been filed by the petitioner claiming various benefits for the period in between the order of appointment i.e. 23.3.2005, and her joining dated 31.10.2011.

In view of the proceeding on the last date the issue has been confined by the petitioner's counsel to grant of benefits under the Old Pension Scheme existing prior to 01.09.2005.

It is submitted by the learned counsel for the petitioner that the fact regarding petitioner's appointment letter not being served earlier stands admitted in view of communication (Annexure-3) dated 21.10.2011 issued by the Director-in-Chief Health Services, government of Bihar, Patna. The petitioner has been granted permission to join after taking note of the fact that the order of appointment pursuant to letter dated 23.3.2005 had earlier not been served upon the petitioner.

Counsel for the State submits that there is no verification of the issue till date regarding who was at fault for non-joining for the period between 23.3.2005 to 31.10.2011.

It is also submitted that on 21.10.2011 when the



petitioner has been allowed to submit her joining, a clear reference has been made to the original appointment order dated 23.3.2005 and the terms and conditions contained therein. In the circumstances the petitioner cannot claim any further benefit as the order of appointment dated 23.3.2005 clearly contemplates that appointment would be with effect from the date of joining which in case of the petitioner was in 2011.

Having considered the rival submissions of the parties, this Court would find that the petitioner's plea of the fact that appointment letter dated 23.3.2005 was not served on her has been accepted by the authorities and only due to such reason she has been allowed to an opportunity to submit her joining much latter on i.e. 21.10.2011.

Since, the authorities themselves have accepted the said fact of non-service of earlier appointment letter to the petitioners, delay in petitioner's joining for such reason cannot be made the basis to deprive the petitioner's benefits of old pension scheme as existing prior to 01.09.2005. In this connection this Court petitioner's reliance upon the judgment in the case of *Mani Kumar Versus State of Bihar reported in 2016 (3) PLJR 941* appears to be correct.

This Court would thus direct that merely for the



purposes of extending the benefits of old Pension Scheme as existing prior to 01.09.2005 the petitioner's service length should be counted with effect from the date of initial appointment order dated 23.3.2005.. The petitioner would not be entitled to any other benefits in respect of the period between 23.3.2005 to 31.10.2011.

With the aforesaid direction the writ petition is allowed. Orders dated 11.5.2015 issued by the Director-in-Chief, Health Services as well as order dated 03.04.2014 of the Director Provident Fund Directorate rejecting such claim of the petitioner are quashed, in so far as petitioner's entitlement to benefits under the Old Pension Scheme is concerned.

Writ petition stands allowed.

(Madhuresh Prasad, J)

T.Kr./-Rahul
Mishra

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